IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 233 OF 1989

Shri Namdeo Dada Pisal ... Appellant

V/s

State of Maharashtra & ors. ... Respondents

Mr. S.G. Karandikar for the appellant.

Mrs. G.P. Mulekar, A.G.P. for the State.

Mr. A.V. Anturkar for the respondent No.2.

CORAM: P.V. KAKADE, J.

DATED: 30TH SEPT., 2005

ORAL JUDGMENT:

1. The present appeal is preferred by the appellant plaintiff against the judgment and order passed by the Addl. District Judge, Solapur, dated 15.3.1989 dismissing the appeal and confirming the judgment and order passed by the Trial Court dismissing the suit of the plaintiff dated 13.1.1986.

2. The plaintiff filed the suit for perpetual injunction simplicitor against the defendant No.1 State and defendant Nos.2 and 3.

3. I have heard the learned counsel for both parties. Perused the record.

Two agricultural lands bearing Survey Nos.149, area 24 acres and 1 guntha and Survey No.200, area 6 acres and 28 gunthas (now gat No.364 to both lands) at Village Mahalung, Tal. Malshiras, are the subject matter of the suit. The said lands were originally owned by one Ramabin Bhivaji Bakke as Rayatau Land which was forfeited to the Government on account of failure of the land holders of the lands to pay to the Government the land revenue due from them. Both these lands were shown as Sarkari Pad Jamin in the mutation register between the year 1913 to the year 1921-22. Holders of the land had leased out these lands to Kamgar Rakhwaldar viz. Ramoshi and they were actually cultivating these lands since prior to the date of forfeiture till 1st May, 1943. An order was passed by the Prant Officer, Pandharpur Division bearing No.1/956 dated 1.5.1943 granting these two lands to the Kamgar Rakhwaldar from the tenants who were actually cultivating these lands. In the year 1945, mutation entry No.1901 dated 14.11.1945 was made in the Hakkapatra showing allotment of land to Kamgar Rakhwaldars. Said Kamgar Rakhwaldar

alias Ramoshi of village Khandali were very poor persons and were not in a position financially to invest any amount and therefore with a view to cultivate these lands profitably, they orally leased out these lands to the plaintiff in the year 1953-54 and the State of Maharashtra never took any objection to the plaintiff's cultivation of land as a lawful tenant till 31.12.1970 on which day the Collector Solapur passed an order in the appeal filed by Jagannath, one of the Ramoshis, Rakhwaldar of village Khandali for eviction of the plaintiff from these lands. It is the case of the plaintiff that he has made improvement in the said land by investing the large amount to the tune of Rs.2,30,000/- and started raising sugarcane and cash crops to pay the loan taken by him from the sugar factory, Shripur and the other persons and he is still indebted. On 30.4.1955, second order of regrant was passed in favour of Kamgar Rakhwaldar, namely, Ramoshi of village Khandali. Two persons by name Bala Hari and Malhari Bapu of village Khandali had made an application under Sec. 202 of the Bombay Land Revenue Code to the Dy. Collector, Pandharpur for eviction of the plaintiff from these lands. They claimed themselves to be the landlord and claimed that the plaintiff was in unlawful occupation of the land. On 28th December, 1966, the

Deputy Collector, by his order, held that no case is made out for taking action under Sec. 202 of the Bombay Land Revenue Code and the land had ceased to be the Watan Land since the year 1955 i.e. from the date when the second order of regrant dated 30.4.1955 to Ramoshi Rakhwaldar of village Khandali was passed. Against the order passed by the Deputy Collector dated 28.12.1966, an appeal was preferred to the Collector Solapur by Bala Hari bearing Appeal No. 1 of 1967 which came to be dismissed on 31.8.1967. Thereafter, Jagannath claiming to be Kamgar Ramoshi Rakhwaldar of village Khandali filed an application in the year 1970 likewise the application of Bala Hari. Show cause notice was issued to the plaintiff asking him to show cause why possession of the suit property should not be withdrawn from him. After the reply, the said application was decided on 31.12.1970 and it was directed that the possession of the plaintiff was held to be unlawful and it was held that the suit land should be forfeited to the Government. The Collector also passed the order that the land be forfeited to the Government and the possession of the land be taken immediately from him.

Against the order passed by the Collector, the plaintiff filed an appeal to the Commissioner Pune and obtained

the stay but inspite of the stay he was dispossessed by the Tahsildar Malshiras. The plaintiff again moved the Commissioner and the Commissioner restored his possession. Later on, the Commissioner dismissed his appeal on 22.8.1971 and confirmed the order of forfeiture passed by the Collector, Solapur. The plaintiff thereafter preferred an appeal to the Revenue Minister and obtained the stay from the Revenue Minister. The Revenue Minister by his final judgment and order confirmed the order of the Commissioner. Thereafter the plaintiff filed writ petition against the order in this Court. However, the said writ petition was withdrawn by the plaintiff with liberty to file a fresh civil suit on the same cause of action and petition was disposed of on 8.4.1980.

Thereafter, a notice under Sec.80 of the C.P.C. was issued to the Collector which was served on the Collector but before expiry of the period of two months, the plaintiff was forced to file a suit which was registered as R.C.S. No. 1038 of 1971. As it was filed before the expiry of the period of two months, the plaintiff was required to file an application for withdrawal of the said suit with permission to file the fresh suit on the same cause action which was allowed

and, therefore, the present suit came to be filed for relief of perpetual injunction restraining the defendant State of Maharashtra from taking possession of the suit land from the plaintiff permanently. There is no declaration sought by the plaintiff to challenge the judgment and order passed by the Collector or Commissioner. The plaintiff amended the plaint after filing of the suit. The amendment was to the effect that the persons claiming to be the owner of the land are necessary parties and, therefore, they were required to be added as the defendants.

The defendant filed the written statement and opposed the suit of the plaintiff.

4. The learned Trial Judge on the basis of the pleadings, adjudicated the dispute after settling only two issues of law regarding jurisdiction of the Civil Court as well as issue of bar of limitation.

After hearing both parties, learned Trial Judge came to the conclusion that the Civil Court has no jurisdiction to entertain and try the suit. It was further held that the suit was also barred by law of limitation.

5. The appeal was carried to the District Court, Solapur. The learned Addl. District Judge, Solapur, after hearing both parties, came to the conclusion that the findings recorded by the Trial Court to the effect that Civil Court has no jurisdiction to try the suit was legal and proper though the finding recorded on the issue of limitation was set aside. Finally, the appeal came to be dismissed and hence the present appeal.

6. At the outset, it may be noted that, at the time of admission of this appeal, the only substantial question of law which was raised, was to the effect that, whether the Civil Court has jurisdiction to entertain and try the appellant's suit, without praying for declaration about the nullity of the order of the Collector in view of the fact that this decision prima facie is illegal and void.

In this regard, it must be noted that the order dated 31.12.1970 passed by the District Collector has been confirmed by the Commissioner by order dated 22.8.1971. The order is further confirmed by the revenue minister. The plaintiff in the present suit has not challenged the order passed by the Collector dated 31.12.1970 which was confirmed by the Commissioner vide order dated

22.8.1971. In my considered view, unless he seeks such declaration, the suit is clearly barred by the provisions of the Revenue Courts Jurisdiction Act. The plaintiff is completely an unauthorised person. The land has been regranted in favour of Kamgar Rakhwaldar on 30.4.1955. Till 30.4.1955, the land was Sarkari Pad Jamin. The first regrant of the land was passed in favour of Kamgar Rakhwaldar on 1.5.1943. Induction of the plaintiff in the year 1953-54 was without permission of the Collector and without permission of the State Government. Therefore, such occupation of the plaintiff is completely unauthorised in respect of the Government land and, therefore, the Collector has rightly passed the order of forfeiting the land. It is also to be noted that the Collector has not decided the issue of tenancy but the Collector has evicted unauthorised person by his order. In this regard it also may be noted that the provision of Bombay Revenue Jurisdiction Act would come into play. Sec. 4(d) of the said Act reads as under :-

> "Subject to the exceptions hereinafter appearing no civil Court shall exercise jurisdiction as to any of the following matters -

a) .....

b) .....

c) .....

d) to be entered in the revenue survey or settlement records or village papers as liable for the land revenue, or as superior holder, inferior holder, occupant or tenant or, ...".

Therefore, it is clear that, by virtue of the said provision, the Civil Court is barred from entertaining the suit against the order passed by the revenue authority in respect of such matters. The learned Collector has held in his order that the appellant is not in possession of the said land lawfully and he cannot be a legal tenant. I think, under this provision the Civil Court has no jurisdiction to entertain the said suit. Therefore, the learned lower appellate Court Judge has rightly come to the conclusion that the Civil Court has no jurisdiction to entertain the suit in view of the Bombay Revenue Jurisdiction Act.

Besides this aspect, as noted earlier, when the Collector’s order is not challenged by seeking

declaration contemplated under the provisions of the Specific Relief Act, no relief can be claimed as agitated on behalf of the plaintiff in this case.

7. The learned counsel for the appellant sought to put reliance on the ruling of this Court in the case of **Nimba Bhuta Koli v/s Barku Zamrya Bhil & anr. and Onkar Tumadu Koli & anr. v/s Janga Sada Bhil & ors., reported in 1986 (1) Bom. C.R. 75,** wherein it is observed that, the order of Tahsildar allotting land to a person was found to be illegal and without jurisdiction, then legality of such order could be questioned in Civil Court. Section 6 of the Bombay Revenue Jurisdiction Act, 1876 invisages suits against the revenue officers but only provides that they shall not be liable to be sued for damages in any Civil Court for any act bonafide done or ordered to be done by them in pursuance of the provision of any law for the time being in force. However, perusal of the entire judgment shows that the ratio laid down by the learned Single Judge is based upon totally different set of facts and, therefore, it would not be applicable to the present case. In the instant case, the plaintiff is unable to show how the order of the Collector, which is again confirmed by the Revenue Commissioner and finally by the Revenue

Minister, is illegal and in any manner injustice is caused to him especially when the factual matrix would show that the plaintiff in fact had no concern with the suit property right since the beginning and he had entered into the land which was Sarkari Pad Jamin without any authority. Moreover, the said order passed by the Collector is also not sought to be challenged by seeking declaration to that effect and, therefore, in view of this aspect, I have no hesitation to hold that

the findings recorded by the lower appellate Court are legal and proper and would brook no interference.

In the result, the appeal stands dismissed with no order as to costs.

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